

AG Contract No.: KR05-0458TRN
ADOT ECS File No.: JPA 05-036
Project: Exchange of Funds
Section: SR 89/East Flagstaff Traffic Interchange
TRACS No.: H5106 01C
BUDGET SOURCE Item No.:

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF FLAGSTAFF

THIS AGREEMENT is entered into December 23rd, 2005, pursuant to Arizona Revised Statutes ("A.R.S."), Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF FLAGSTAFF, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by A.R.S. Section 28-401 to enter into this Agreement and has delegated the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by A.R.S. Section 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The State has programmed \$21,300,000.00 in Surface Transportation Program ("STP"), Transportation Enhancement and District Minor funds, for the design, construction and construction engineering of the East Flagstaff Traffic Interchange (TI), herein referred to as the "State's Project". The City, by application through the Federal Highway Administration ("FHWA"), has received authorization to expend \$1,297,600.00 solely on the East Flagstaff TI project, from Section 115 (\$1,000,000.00) and 117 (\$297,600.00) discretionary funds.

4. The State agrees to use the City's \$1,297,600.00 discretionary funds toward the State's Project. The State shall exchange its Federal STP funds for the City's discretionary funds, in an amount not to exceed \$1,297,600.00. Said exchange entitles the City to apply to FHWA for future projects with an estimated total project cost of \$1,376,034.00 (amount includes the required Federal matching funds). Such funds shall be made available upon application by the City, through the State's Local Government Section and shall follow FHWA regulations in securing eligible project funding on a cost reimbursement basis.

5. The purpose of this Agreement is to acknowledge the exchange of funds between the City and the State (collectively the "Parties") and outline each Party's responsibility.

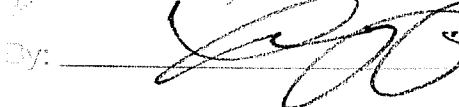
THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

NO. 27894

Filed with the Secretary of State

Date Filed: 12/23/05


Secretary of State

By: 

II. SCOPE OF WORK

1. The State shall:

- a. Upon award of the State's Project, use the City's \$1,297,600.00 discretionary funds toward the State's Project, in an amount not to exceed \$1,297,600.00.
- b. Earmark and make available upon application by the City, through the FHWA and the State's Local Government Section, an amount not to exceed \$1,297,600.00 of State's Federal STP funds for future projects requested by the City. Such requests shall require the City to secure eligible project funding match on a cost reimbursement basis, per FHWA regulations
- c. Not be obligated to exchange any funds over and above the amount of \$1,297,600.00 as described herein.

2. The City shall:

- a. Authorize the State to utilize up to \$1,297,600.00 of the City's Section 115 & 117 discretionary funds for the State's Project.
- b. Be entitled to apply to FHWA for future projects with an estimated project cost of \$1,376,034.00, upon award of the State's Project. Acknowledge the State's STP Federal funds to be exchanged shall be made available upon the City's application to FHWA and shall follow FHWA regulations in securing eligible project funding match on a cost reimbursement basis. Such application shall be made through the State's Local Government Section.
- c. Be responsible for the difference between the estimated available projects funds of \$1,376,034.00 and total exchange amount of \$1,297,600.00.

III. MISCELLANEOUS PROVISIONS

1. The City assumes full responsibility for all required matching funds for future projects applied for by the City. It is agreed that the State's participation is confined solely to exchanging funds in respect to the terms of this Agreement and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees, in the event of any such action.

2. This Agreement shall become effective upon filing with the Secretary of State.

3. The terms, conditions and provisions of this Agreement shall remain in full force and effect until all funds to be exchanged, as described herein, have been expended.

4. This Agreement may be cancelled in accordance with A.R.S. Section 38-511.

5. The provisions of A.R.S. Section 35-214 are applicable to this Agreement.

6. Non-Discrimination. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination."

7. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in A.R.S. Section 12-1518, as applicable.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

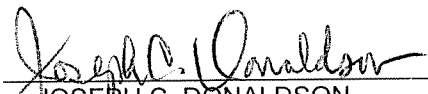
Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007
FAX: (602) 712-7424

City of Flagstaff
City Manager
211 West Aspen Avenue
Flagstaff, AZ 86001-5399

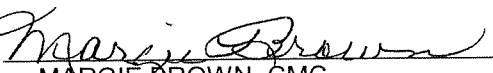
10. In accordance with A.R.S. Section 11-952.D., attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that this Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

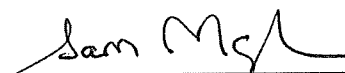
CITY OF FLAGSTAFF

By 
JOSEPH C. DONALDSON
Mayor


ATTEST

By 
MARGIE BROWN, CMC
City Clerk

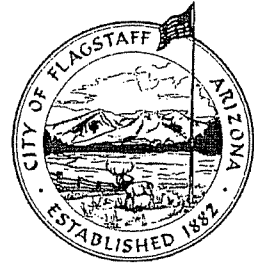
**STATE OF ARIZONA
DEPARTMENT OF TRANSPORTATION**

By 
SAM MAROUFKHANI, P.E.
Deputy State Engineer, Development

ATTEST

By 
JOHN MCGEE,
Funding Authority

CITY OF FLAGSTAFF STAFF SUMMARY REPORT



To: Honorable Mayor and Council

From: David Wessel, FMPO Transportation Planner
X4841

Date: May 19, 2005

Meeting Date: June 7, 2005

Title: Resolution 2005- 64 A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF FLAGSTAFF ("CITY") AND THE STATE OF ARIZONA THROUGH THE DEPARTMENT OF TRANSPORTATION ("STATE") AUTHORIZING THE EXCHANGE OF FEDERAL DISCRETIONARY FUNDS AWARDED TO THE CITY FOR THE EAST FLAGSTAFF TRAFFIC INTERCHANGE ("EFTI") FOR FEDERAL SURFACE TRANSPORTATION PROGRAM ("STP") FUNDS AVAILABLE FROM THE FEDERAL HIGHWAY ADMINISTRATION ("FHWA") THROUGH THE STATE FOR FUTURE PROJECTS.

Recommended Action:

Read Resolution 2005 - 64

Adopt Resolution 2005 - 64

ACTION SUMMARY: Adoption of Resolution 2005- 64 and approval of the intergovernmental agreement will exchange federal funds awarded to the City of Flagstaff for the East Flagstaff Traffic Interchange (EFTI) out of Section 115 and Section 117 for a different type of federal funds known as Surface Transportation Program (STP) funds. ADOT will use the Section 115 and 117 funds on the EFTI and hold the STP funds on account for later use by the City.

DISCUSSION:

Background/History:

- The City and ADOT mutually agreed to the East Flagstaff TI project.
- The City had several projects adjacent to the EFTI (i.e., additional pedestrian facilities, the new mall entrance, improvements to Railhead Avenue adjacent to the Forest Service) that would improve the operation of the EFTI.

- The City of Flagstaff successfully applied for federal transportation funding for the East Flagstaff Traffic Interchange through the offices of Congressman Renzi.
- These funds, known as Section 115 and Section 117, are \$1,000,000 and \$297,600 respectively, totaling \$1,297,600

Key Considerations:

- The State's STP funds the City receives in exchange are not directly tied to the EFTI. The higher total, \$1,376,034, includes \$78,000 in local match funds the City would otherwise not have to pay.

Community Benefits and Considerations:

- There will be an efficient expenditure of funds.

Community Involvement:

- The EFTI is part of the regional plan and has received considerable public input.

Financial Implications:

- There are no immediate financial implications.
- The City will have on account with ADOT \$1,297,600 in STP funds.
- Per conversations with ADOT staff, the City will draw down these funds on a project-by-project basis and will have to show the local match for each project.
- Typically, for each project the City exchanges STP dollars for Highway User Revenue Fund (HURF) for which ADOT charges a 10% surcharge. This surcharge is seen as effective because it allows the City to deliver projects under its own processes and not the longer federal processes. The federal match, 5.7% of the project cost, is no longer required.

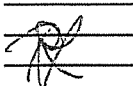
Options and Alternatives:

- Approve the Resolution
- Do not approve Resolution

Attachments/Exhibits:

- Resolution 2005 - _____
- Joint Powers Agreement 05-036

 Department Head

INITIALS	RESPONSIBILITY	DATE	INITIALS	RESPONSIBILITY	DATE
	BIDS/PURCHASES			FINANCE/BUDGET	
	GRANTS/CONTRACTS			IGAS	
	LEGAL	5/26/05			
DATE OF COUNCIL APPROVAL: 6-7-05 mfb					

RESOLUTION NO. 2005-64

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF FLAGSTAFF ("CITY") AND THE STATE OF ARIZONA THROUGH THE DEPARTMENT OF TRANSPORTATION ("STATE") AUTHORIZING THE EXCHANGE OF FEDERAL DISCRETIONARY FUNDS AWARDED TO THE CITY FOR THE EAST FLAGSTAFF TRAFFIC INTERCHANGE ("EFTI") FOR FEDERAL SURFACE TRANSPORTATION PROGRAM ("STP") FUNDS AVAILABLE FROM THE FEDERAL HIGHWAY ADMINISTRATION ("FHWA") THROUGH THE STATE FOR FUTURE PROJECTS.

WHEREAS, the State has programmed \$21,300,000.00 in Federal STP, Transportation Enhancement and District Minor funds ("STP Funds") for the design, engineering and construction of the EFTI; and

WHEREAS, the City, by application through the FHWA, has received authorization to expend a total of \$1,297,600.00 in Federal discretionary funds, \$1,000,000.00 from Section 115 and \$297,600.00 from Section 117 ("Discretionary Funds"), solely on the EFTI project; and

WHEREAS, the State agrees to provide its STP Funds to the City, in an amount not to exceed \$1,297,600.00, in exchange for the City's Discretionary Funds, and the State agrees to use the Discretionary Funds for the EFTI project; and

WHEREAS, said exchange of the City's Discretionary Funds for the State's STP Funds will entitle the City to apply to the FHWA for STP funding for future projects with an estimated total project cost of \$1,376,034.00, which amount would include the required Federal matching funds; and

WHEREAS, the City and the State desire to enter into an intergovernmental agreement ("IGA"), a copy of which is submitted as an attachment to the Staff Summary Report in support of this Resolution, in order to authorize the exchange of the City's Discretionary Funds for the State's STP Funds and to set forth the

rights and obligations of the City and the State with regard to said exchange of funds; and

WHEREAS, the City's staff and the State desire to obtain City Council approval for the City's entry into the proposed IGA; and

WHEREAS, the City Council has reviewed the proposed IGA and finds that it is in the best interests of the City to enter into the IGA with the State.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That the Intergovernmental Agreement between the City and the State submitted as an attachment to the Staff Summary Report in support of this Resolution, be hereby approved and the Mayor be authorized and directed to execute the Intergovernmental Agreement on behalf of the City of Flagstaff.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this 7th day of June, 2005.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

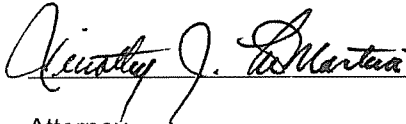
CITY ATTORNEY

ATTORNEY APPROVAL FORM


FOR THE CITY OF FLAGSTAFF

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF FLAGSTAFF, an agreement among public agencies, which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954, and declares this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 4th day of November, 2005.



Attorney

<p>TERRY GODDARD Attorney General</p>	<p> OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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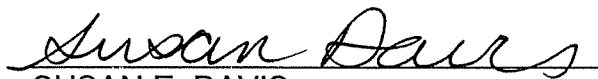
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR05-0458TRN (**JPA 05-036**), an Agreement between public agencies, i.e., The State of Arizona and City of Flagstaff, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: December 14, 2005

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:938841
Attachment